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From: Stephanie Fay Legal Assistant to Betty Formby	No. of Pages Including Cover Sheet: 23
Message: Enclosed herewith: <ul style="list-style-type: none">• Transmittal of Appeal Brief; and• Appeal Brief.	
Re: Application No. 09/894,065 Attorney Docket No: AUS920010293US1	
Date: Monday, May 08, 2006	
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

MAY 08 2006

In re application of: Koelle et al.

Serial No.: 09/894,065

Filed: June 28, 2001

For: Method and Apparatus for Using
Dynamic Grouping Data to Group
Attributes Relating to Computer
Systems

35525

PATENT TRADEMARK OFFICE
CUSTOMER NUMBER§
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§

Group Art Unit: 2182

Examiner: Chen, Alan S.

Attorney Docket No.: AUS920010293US1

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By:

Stephanie Fay
Stephanie FayTRANSMITTAL OF APPEAL BRIEFCommissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

ENCLOSED HEREWITH:

- Appeal Brief (37 C.F.R. 41.37)

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Respectfully submitted,

Betty Fornby

Betty Fornby

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Docket No. AUS920010293US1

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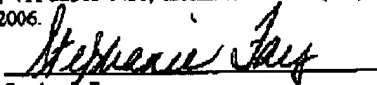
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Alexandria, VA 22313-1450, facsimile number (571) 273-8300
on May 8, 2006.

By:


Stephanie Fay**APPEAL BRIEF (37 C.F.R. 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on March 6, 2006.

A fee of \$500.00 is required for filing an Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 09-0447. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0447. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0447.

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Koelle et al. - 09/894,065

REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation of Armonk, New York.

RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

STATUS OF CLAIMS

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-31

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: 2, 11, 15, and 22
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1, 3-10, 12-14, 16-21, and 23-31
4. Claims allowed: None
5. Claims rejected: 1, 3-10, 12-14, 16-21, and 23-31
6. Claims objected to: None

C. CLAIMS ON APPEAL

The claims on appeal are: 1, 3-10, 12-14, 16-21, and 23-31

STATUS OF AMENDMENTS

An amendment to remove 112(2) issues is enclosed with this appeal and has not yet been entered.

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Koelle et al. - 09/894,065

SUMMARY OF CLAIMED SUBJECT MATTER

A. CLAIM 1 - INDEPENDENT

The subject matter of claim 1 is directed to a data processing method for grouping based on attributes (Figures 6, 7, page 16, line 25 through page 18, line 14). The method contains the following steps:

- maintaining a set of attributes that relate to elements in data processing systems; a combination of the attributes is used to create a specific group of elements containing the desired combination of attributes (600, page 16, line 25 through page 18, line 14);
- upon notification of a new attribute that can be searched, dynamically updating the set of attributes used (not specifically shown, page 10, line 29 through page 12, line 9);
- receiving a query from a requestor, the query including criteria (700, page 17, line 17 through page 18, line 2);
- identifying a first group of devices, the attributes of which match the criteria (702, 704, page 18, lines 3-12); and
- returning the first group to the requestor (706, page 18, line 12-14).

B. CLAIM 9 - INDEPENDENT

The subject matter of claim 9 is directed to a data processing system (Figure 2, page 7, line 10 through page 8, line 21) containing a bus system (206, page 7, lines 14-16), a communications unit (218, 220, page 7, lines 29-31), a storage device (232, page 8, lines 5-8) containing a set of instructions corresponding to the method of claim 1, and a processing unit (202, 204, page 7, lines 14-16) connected to the bus system. This claim is a system counterpart of independent claim 1.

C. CLAIM 14 - INDEPENDENT

The subject matter of claim 14 is directed to a data processing system (Figure 2, page 7, line 10 through page 8, line 21) containing the means for performing the method of claim 1. The data processing system includes:

- maintaining a set of attributes relating to elements in data processing systems, wherein a desired combination of the attributes in a plurality of possible combinations of the attributes is used to create a respective group of elements containing the respective desired combination of the attributes (600, page 16, line 25 through page 18, line 14);
- upon notification that a new attribute can be searched, dynamically updating the set of attributes (not specifically shown, page 10, line 29 through page 12, line 9);
- receiving means for receiving a query from a requestor, wherein the query includes criteria (218, 220, page 7, line 29-31);
- identifying means for identifying a first group of devices, the attributes of which match the criteria (202, 204, page 7, line 14-16); and
- returning means for returning the first group to the requestor (218, page 7, lines 29-31).

D. CLAIM 21 - INDEPENDENT

The subject matter of claim 21 is directed to a computer program that performs the method of claim 1 (not specifically shown, page 20, line 18 through page 21, line 4). This claim is a computer program version of independent claim 1.

E. CLAIM 30 - DEPENDENT

The subject matter of claim 30 is directed to adding that actions the identifying means of claim 14 retrieves the first group from storage if the first group has previously been generated and otherwise dynamically generates the group (202, 204, page 7, line 14-16).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL**A. GROUND OF REJECTION 1 (Claims 1, 3-10, 12-14, 16-21, and 23-31)**

Claims 1, 3-10, 12-14, 16-21, and 23-31 stand rejected under 35 U.S.C. § 102(e) as anticipated over McCormack *et al.*, Real-Time User-Defined Creation of Network Device Information Collections, U.S. Patent No. 6,295,527, September 25, 2001 (hereinafter "McCormack")..

ARGUMENT

A. GROUND OF REJECTION 1 (Claims 1, 3-10, 12-14, 16-21, and 23-31)

Claim 1 is representative of the claims. Regarding this claim, the rejection states:

Per claims 1, 9, 14 and 21, McCormack discloses a method (Fig. 4-5) ... wherein the processing unit executes the set of instructions to maintain a set of attributes relating to elements in a data processing system (Fig. 2, element 330 shows attributes of network devices; Column 7, lines 39-50; Fig. 3, attribute information including the types of device, OS version, etc), wherein a desired combination of attributes (Fig. 4, particularly element 412, McCormack discloses using a filter to filter out a desired group of devices with attributes specified in the filter; Column 15, lines 25-35 disclose user specifying attributes/criteria to query) in the a plurality of possible combination of attributes is used to create respective group of devices containing the respective desired combination of the attributes (Fig. 3 shows an example of the various types of attributes one can select); upon receipt of a notification that a new attribute can be searched, dynamically update the set of attributes (Column 10, lines 66-Column 11 lines 10 specifically disclose the ability to "dynamically generate data", e.g., the system, particularly the Network Management Server, to dynamically poll the network for network device attributes); receiving a query from a request, wherein the query includes criteria (Fig. 4A, element 412); identifying a first group of devices, the attributes of which match the criteria (Fig. 4A, element 414); and return the first group to the requester (Fig. 4A, elements 416 and 418).

Office Action of December 5, 2005, item 8, pages 3-4, emphasis added

The disagreement between the Examiner and Appellants centers on the portion of the rejection underlined above, specifically what it means to receive notification that a new attribute can be searched and the set of attributes updated. Appellants asserted, in a telephonic interview on December 29, 2005, that McCormack will recognize and include new values for an existing attribute, but does not receive notification of a new attribute and update the list of attributes. In response, the Examiner stated:

Examiner argues new attribute being broad enough to encompass updating attributes, e.g., in McCormack, an update IOS version would constitute a new attribute. Applicant representative argues new attribute being an entirely new functional category.

Interview Summary mailed January 4, 2006, under Substance of the Interview

A prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in

the claims. *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). All limitations of the claimed invention must be considered when determining patentability. *In re Lowry*, 32 F.3d 1579, 1582, 32 U.S.P.Q.2d 1031, 1034 (Fed. Cir. 1994). Anticipation focuses on whether a claim reads on the product or process a prior art reference discloses, not on what the reference broadly teaches. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983).

Claim 1 recites:

1. A method in a data processing system for grouping based on attributes, the method comprising:
 - maintaining a set of attributes relating to elements in data processing systems, wherein a desired combination of the attributes in a plurality of possible combinations of the attributes is used to create a respective group of elements containing the respective desired combination of the attributes;
 - upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes;
 - receiving a query from a requestor wherein the query includes criteria;
 - identifying a first group of devices, the attributes of which match the criteria; and
 - returning the first group to the requestor.

Appellants submit that McCormack does not anticipate the method recited in claim 1 because this reference does not show or suggest the step "*upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes*".

Looking first at the meaning of *attribute*, Merriam Webster online dictionary at m-w.com defines an *attribute* as an *inherent characteristic or an accidental quality*. Typical attributes of a computer system include clock speed, processor type, number of processors, amount of memory, and hard drive space, to name a few. A typical grouping request will specify one or more attributes and the desired values for those attributes. For example, the request might wish to search for systems in which the attribute *hard drive space* has a value of *greater than 40 megabytes*.

The following excerpt from McCormack is cited against the *dynamically updating* step:

The tables referenced by the Filter Metadata table 360 can store dynamically generated data. For example, in the preferred embodiment, the third filter of the filter dialog 210 references a Managed Device table 304 that stores extensive information about devices under management of the Network Management Server 102. In this embodiment, an inventory polling process periodically polls the network 108, receives information about the network

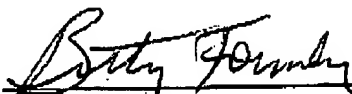
devices 118a-118c, and stores values derived from that information in a column of the Managed Device table 304 called the sysDescription column. One portion of the information stored in the sysDescription column is the version number of the input/output system (IOS) used by the device that has been polled. A separate process periodically parses values in the sysDescription column, extracts an IOS version value from that column, and stores the IOS version value in a IOS Version column of the Managed Device table 304. This dynamically created data is displayed in the IOS Version column 316 of the view 310.

McCormack, column 10, line 66 through column 11, line 17

In the excerpt cited above, a process periodically polls the devices in the system and collects, among other values, the value of the input/output system (IOS) version. However, it is known that in polling devices within a system, there are often a large number of items of information that one can request. Therefore, the polling device would not send a blanket request for all information, but instead sends a request for specific information, such as the IOS version number. Because of this requirement, **McCormack** needs to know beforehand the attributes whose values are desired. **McCormack** receives a new value for an existing attribute, but **McCormack** does not receive or add a new attribute. **McCormack** does not show or suggest that a new characteristic or attribute can be detected and added. Therefore this reference does not show the step "*upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes*" and does not anticipate the invention recited in claim 1.

Furthermore, **McCormack** does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. The program disclosed in **McCormack** is considered "dynamic" in that it will pick up new values for the existing attributes, as opposed to receiving new attributes. Absent the examiner pointing out some teaching or incentive to modify **McCormack** to accept new attributes, one of ordinary skill in the art would not be led to modify **McCormack** to reach the present invention when the reference is examined as a whole. Absent some teaching, suggestion, or incentive to modify **McCormack** in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

The Board of Appeals is requested to overturn the outstanding rejection and to indicate the claims in this application to be allowed.


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CLAIMS APPENDIX

The text of the claims involved in the appeal are:

1. A method in a data processing system for grouping based on attributes, the method comprising:

maintaining a set of attributes relating to elements in data processing systems, wherein a desired combination of the attributes in a plurality of possible combinations of the attributes is used to create a respective group of elements containing the respective desired combination of the attributes;

upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes;

receiving a query from a requestor wherein the query includes criteria;

identifying a first group of devices, the attributes of which match the criteria; and

returning the first group to the requestor.

2. (Cancelled)

3. The method of claim 1, wherein the set of attributes include at least one of a processor type, processor clock speed, an amount of memory, memory type, bus system, bus clock speed, storage capacity, connection, video card specification, and operating system.

4. The method of claim 1, wherein the first group identifies a set of data processing systems.

5. The method of claim 1, wherein the first group is used to install software to members of the first group.
6. The method of claim 1, wherein the requestor is a software process in a data processing system used to request members of the first group.
7. The method of claim 1, wherein the first group is generated using non-preexisting data.
8. The method of claim 1, wherein the first group is generated using meta-data describing attributes within the set of attributes.
9. A data processing system comprising:
 - a bus system;
 - a communications unit connected to the bus system;
 - a storage device connected to the bus system, wherein the storage device includes a set of instructions; and
 - a processing unit connected to the bus system, wherein the processing unit executes the set of instructions to:
 - maintain a set of attributes relating to elements in data processing systems, wherein a desired combination of the attributes in a plurality of possible combinations of the attributes is used to create a respective group of devices containing the respective desired combination of the attributes;

upon receipt of a notification that a new attribute can be searched, dynamically
update the set of attributes;

receive a query from a requestor, wherein the query includes criteria; and
identify a first group of devices, the attributes of which match the criteria; and
return the first group to the requestor.

10. The data processing system of claim 9, wherein the bus system is a single bus.
11. (Cancelled)
12. The data processing system of claim 9, wherein the processing unit includes a plurality of processors.
13. The data processing system of claim 9, wherein the communications unit is one of a modem and Ethernet adapter.
14. A data processing system for grouping based on attributes, the data processing system comprising:

maintaining a set of attributes relating to elements in data processing systems, wherein a desired combination of the attributes in a plurality of possible combinations of the attributes is used to create a respective group of elements containing the respective desired combination of the attributes;

upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes;

receiving means for receiving a query from a requestor, wherein the query includes criteria;

identifying means for identifying a first group of devices, the attributes of which match the criteria; and

returning means for returning the first group to the requestor.

15. (Cancelled)

16. The data processing system of claim 14, wherein the set of attributes include at least one of a processor type, processor clock speed, an amount of memory, memory type, bus system, bus clock speed, storage capacity, connection, video card specification, and operating system.

17. The data processing system of claim 14, wherein the first group identifies a set of data processing systems.

18. The data processing system of claim 14, wherein the group is used to install software to members of the group.

19. The data processing system of claim 14, wherein the requestor is a software process in a data processing system used to request members of the group.

20. The data processing system of claim 14, wherein the first group is generated using non-preexisting data.

21. A computer program product in a computer readable medium for grouping based on attributes, the computer program product comprising:

first instructions for maintaining a set of attributes relating to elements in data processing systems, wherein a desired combination of the attributes in a plurality of possible combinations of the attributes is used to create a respective group of elements containing the respective desired combination of the attributes and upon receipt of a notification that a new attribute can be searched, dynamically updating the set of attributes;

second instructions for receiving a query from a requestor, wherein the query includes criteria;

third instructions for identifying a first group of devices, the attributes of which match the criteria; and

fourth instructions for returning the first group to the requestor.

22. (Cancelled)

23. The computer program product of claim 21, wherein the set of attributes include at least one of a processor type, processor clock speed, an amount of memory, memory type, bus system, bus clock speed, storage capacity, connection, video card specification, and operating system.

24. The computer program product of claim 21, wherein the first group identifies a set of data processing systems.
25. The computer program product of claim 21, wherein the first group is used to install software to members of the group.
26. The computer program product of claim 21, wherein the requestor is a software process in a data processing system used to request members of the first group.
27. The data processing system of claim 21, wherein the first group is generated using non-preexisting data.
28. The method of claim 1, wherein if the first group has previously been generated, the identifying step retrieves the group from storage and if the group has not previously been generated, the identifying step dynamically generates the group.
29. The method of claim 9, wherein if the first group has previously been generated, the set of instructions identifies the first group by retrieving the first group from storage and if the group has not previously been generated, the set of instructions identifies the first group by dynamically generating the first group.

30. The method of claim 14, wherein if the first group has previously been generated, the identifying means retrieves the group from storage and if the group has not previously been generated, the identifying means dynamically generates the group.

31. The computer program product of claim 21, wherein if the first group has previously been generated, the third instructions retrieve the group from storage and if the group has not previously been generated, the third instructions dynamically generate the group.

EVIDENCE APPENDIX

There is no evidence to be presented.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings.

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